

IN THE UNITED STATES BANKRUPTCY
FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 11 Case
)	Number <u>90-60484</u>
JAMES SCOTT LIVINGSTON, JR.)	
)	
Debtor)	
_____))	
JAMES SCOTT LIVINGSTON)	FILED
)	at 4 O'clock & 25 min. P.M.
Plaintiff)	Date: 4-30-91
)	
vs.)	Adversary Proceeding
)	Number <u>90-6025</u>
CENTRAL BANK OF SWAINSBORO,)	
CITIZENS FIDELITY BANK AND)	
TRUST COMPANY)	
)	
Defendants)	

ORDER

James Scott Livingston, plaintiff in this adversary proceeding and debtor-in-possession in the underlying Chapter 11 case moves this court for an order to require Mr. Tebbs Moore to submit to an examination pursuant to Bankruptcy Rule 2004 at the law offices of Merrill, Stone & Parks, 101 South Main Street, Second Floor - Mitchell Building, Swainsboro, Georgia, on Monday, May 6, 1991 at 10:00 a.m., and bring with him for inspection and copying certain documents.

Bankruptcy Rule 2004 permits this court upon motion of any party in interest to order the examination of any entity. Bankruptcy Rule 2004(a). Rule 2004 may not, however, be read in

isolation of the other rules governing bankruptcy proceedings. Bankruptcy Rule 2004(c) provides that "[t]he attendance of an entity for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial." Bankruptcy Rule 9016 states that Rule

45 of the Federal Rules of Civil Procedure ("FRCP") applies in cases under the Bankruptcy Code.

FRCP 45 pertains to the issuance of subpoenas for compelling attendance of witnesses and/or production of documents. Mr. Tebbs Moore is not a party in the underlying action and therefore compliance with FRCP 45 is required to compel his attendance at a 2004 examination. FRCP 45(d)(2) provides:

A person to whom a subpoena for the taking of a deposition is directed may be required to attend at any place within 100 miles from the place where that person resides, is employed, or transacts business in person, or is served, or at such other convenient place as is fixed by an order of the court.

This court may direct an examination of Mr. Moore pursuant to Bankruptcy Rule 2004; however, as the examination is of a witness and not a party to this action, the procedural safeguards of FRCP 45(d)(2) must be followed.

The proper procedure for obtaining a bankruptcy examination of witnesses residing outside of the district is to obtain an examination order from the bankruptcy court in the district where the underlying case is pending, and with a certified copy of the order for examination secure a subpoena from the bankruptcy court in the district where the witness resides

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compelling the witness to attend an examination within 100 miles from the place where that witness resides, is employed, or transacts business in person, is served, or at such other place as agreed to by the parties and the witness. In re: Texas Intern Company, 97 B.R. 582 (Bankr. C.D. Calif. 1989).

It is hereby ORDERED, that Mr. Tebbs Moore submit to an examination pursuant to Bankruptcy Rule 2004. It is further ORDERED that plaintiff obtain a subpoena from the bankruptcy court within the district where Mr. Tebbs Moore resides, and serve said subpoena pursuant to Federal Rule of Civil Procedure 45. If a convenient time and place cannot be agreed to by the plaintiff, defendants and Mr. Tebbs Moore, the deposition shall take place on Monday, May 6, 1991 at 10:00 a.m. at Mr. Tebbs Moore place of employment, 127 Short Street, Harrodsburg, Kentucky provided the plaintiff procures and serves the required subpoena in compliance with this order not later than

May 3, 1991. The subpoena shall require Mr. Moore to produce at deposition all files with regard to Metal Masters, Inc., James Scott Livingston, Jr. and Nita Livingston a/k/a Mrs. James Scott Livingston, Jr. for the years 1988, 1989, 1991.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 30th of April, 1991.